

PT 97-61  
Tax Type: PROPERTY TAX  
Issue: Educational Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

---

CHICAGO SOCIETY	)	
OF ALPHA DELTA PHI,	)	Docket No: 94-16-1201
APPLICANT	)	
	)	
v.	)	Real Estate Exemption
	)	for 1994 Assessment Year
	)	
DEPARTMENT OF REVENUE	)	P.I.N.: 20-14-116-006
STATE OF ILLINOIS	)	
	)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Messrs. Vangelis Economou of Dorn, McEachran, Jambor & Keating and Mr. Edward C. Hoffert appeared on behalf of the Chicago Society of Alpha Delta Phi.

**SYNOPSIS:** This proceeding raises the issue of whether real estate assigned Permanent Index Number 20-14-116-006 (hereinafter the "subject property" or the "subject parcel") by the Cook County Board of (Tax) Appeals qualifies for exemption from 1994 real estate taxes under 35 ILCS 200/15-35.<sup>1</sup> In relevant part, that provision states as follows:

---

<sup>1</sup>. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time

All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation], whether owned by a resident or non- resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

\*\*\*

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

(d) in counties with more than 200,00 inhabitants, which classify property, property (including interests in land and other facilities) on or adjacent to (even if separated by a public street, alley, sidewalk, parkway, or other public way) the grounds of a school, if that property is used by academic, research or professional society, institute, association or organization which serves the advancement of learning in a field or fields of study taught by the school and which property is not used with a view to profit.

---

for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

35 **ILCS** 200/15-35.

The controversy arises as follows:

On June 30, 1995, the Chicago Society of Alpha Delta Phi, (hereinafter the "Society" or the "applicant") filed a real estate exemption complaint with the Cook County Board of Tax Appeals (hereinafter the "Board"). Said complaint alleged that the subject parcel was exempt from real estate taxation under 35 **ILCS** 200/15-35.

The Board reviewed applicant's complaint and recommended to the Department of Revenue (hereinafter the "Department") that the requested exemption be denied. On December 7, 1995, the Department accepted this recommendation by issuing a certificate finding that the property did not satisfy the appropriate ownership and use requirements. (Dept. Ex. No. 1).

Applicant later filed a timely appeal to this denial and presented evidence at a formal evidentiary hearing that took place on September 18, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel not be exempt from 1994 real estate taxes.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. No. 1.

2. Applicant acquired ownership of the subject parcel, which is located at 5747 South University Ave, Chicago, IL 60637, via a deed

in trust dated February 7, 1947. Applicant Group Ex. No. 1, Docs A and B;<sup>2</sup> Applicant Ex. No. 1B.

---

<sup>2</sup>. Applicant ostensibly submitted the following documents as part of its Group Exhibit No. 1: The Application for Property Tax Exemption, received by the Department on August 14, 1995; the Real Estate Exemption Complaint filed with the Board on June 30, 1995; a Sidwell map; a trust agreement dated December 19, 1928; a title search dated August 15, 1995; a plat of survey; an Affidavit of Use; a "List of Literary Events Held at Chapter House - 1994[;]" a real estate tax bill for 1994; applicant's Articles of Incorporation and By-laws; a letter, dated November 20, 1992, verifying applicant's exempt status under Section 501(c)(7) of the Internal Revenue Code; a summary of financial condition for the period June 1, 1993 through May 31, 1994; a financial statement for the period June 1, 1994 through May 31, 1995; and the Centennial issue of the "Lion's Head" magazine. The title search and Affidavit of Use were excluded from the record. (Tr. pp. 15, 17-18).

In order to promote greater clarity and prevent any confusion that may result from referring to all the documents as an inseparable part of a single group exhibit, said documents are hereby renumbered as follows: Applicant's Group Ex. No. 1, Document (hereinafter "Doc.") A is the Application for Property Tax Exemption; Applicant's Group Ex. No. 1, Doc. B is the Real Estate Exemption Complaint; Applicant Group Ex. No. 1, Doc. C is the Sidwell map; Applicant's Ex. No. 1 is the excluded trust agreement; Applicant Ex. No. 1A is the excluded title search; Applicant Ex. No. 1B is the deed; Applicant Ex. No. 2 is the plat of survey; Applicant Ex. No. 3 is the excluded Affidavit of Use; Applicant Ex. No. 4 is the "List of Literary Events Held at Chapter House - 1994[;]" Applicant Ex. No. 5 is the tax bill; Applicant Ex. No. 6 are the Articles of Incorporation and By-laws; Applicant Ex. No. 7 is the letter verifying applicant's exempt status under the relevant provisions of the Internal Revenue Code; Applicant Ex. No. 8 is the Summary of Financial Condition for the period June 1, 1993 through May 1, 1994; Applicant Ex. No. 9 is the Financial Statement for the period June 1, 1994 through May 31, 1995; and Applicant Ex. No. 10 is the Centennial Issue of the "Lion's Head" magazine.

All other exhibits submitted by applicant (Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30) shall, when and if necessary, be referred to by the appropriate number. I would nevertheless note that, at hearing, the Administrative Law Judge excluded exhibit numbers 13, 14, 15, 16, 17, 18, 20, 21, 24, and 29 on various grounds, including hearsay, irrelevance and immateriality. (For specific rulings and offers of proof, see, Tr. pp. 26-32, 36, 46-50, 51-54, 79-81, 105-107, 111-112, 117-118). I shall base this Recommendation solely on the evidence admitted at hearing.

3. The subject property is improved with a 2,700 square foot building (hereinafter the "fraternity house") that features three floors and a basement. Applicant Group Ex. No. 1, Docs A and B.

4. There are a total of twenty residential rooms in the fraternity house, fourteen of which were rented to undergraduate students attending the University of Chicago (hereinafter the "University") during 1994. Most, if not all, of the tenants are members of the local chapter of the Alpha Delta Phi Fraternity (hereinafter "ADP" or the "Fraternity"). Applicant does however, allow non-fraternity members to rent rooms in the fraternity house if space permits. Applicant Ex. No. 19; Tr. pp. 37-40, 59.

5. ADP is a national fraternal organization. It is a not-for-profit corporation that obtained a group exemption from federal income tax, under Section 501(c)(7) of the Internal Revenue Code, in April, 1939. Applicant Ex. No. 7; Tr. pp. 54, 67.

6. The Fraternity provides local chapters (such as the one at the University) with programming assistance and other necessary resources. Tr. pp. 69-70.

7. The following lectures and other activities took place at the fraternity house during 1994:<sup>3</sup> John McCormick lead a discussion on "Democratic Thought and Philosophy[;]" Professor Marvin Zonis lead a discussion entitled "Leadership[;]" the Benton Foundation sponsored a discussion and debate on "Tabloid Journalism[;]" Professor Stephen Holmes lead a discussion on "Real and Imagined Threats of Illegal and

---

<sup>3</sup>. Most of these programs were presented by University professors, graduate students or lecturers. For details about the programs themselves, or the affiliations of those who presented them, see, Applicant Ex. Nos. 4, 22.

Unregulated Nuclear Proliferation in the Post-Soviet World[;]" Professor Grigory Kashin lead a discussion entitled "Nabokov, Russian Author of Lolita[;]" Professors Bertram Cohler and William Rainey Harper lead a discussion of "The Relevance of Freud and Modern Psychoanalysis in Today's World[;]" Allen Sanderson, lead a discussion entitled "Economics of Sports and [the] Baseball Strike[;]" Dwight Semler lead a discussion on "Eastern European Politics and the Current Situation in Russia." Applicant Ex. No. 4; Tr. pp. 104-105, 107-110.

8. All of the above presentations were open to the general public. Attendance at the "Tabloid Journalism" discussion consisted of approximately 40 fraternity members, invited guests and "a few people off the street[.]" Attendance at the other programs was unspecified. Applicant Ex. No. 22; Tr. pp. 107-108.

9. Applicant was incorporated under the General Not For Profit Corporation Act of Illinois on July 9, 1947. According to its Articles of Incorporation and By-laws, applicant's corporate purposes are, *inter alia*, as follows:

A. The promotion and encouragement of intellectual pursuits and achievements on the part of male students at the University of Chicago;

B. The acquisition, construction, maintenance and operation of a dormitory to provide housing for male students at the University of Chicago at a cost to such students less than half that for comparable living accommodations obtainable elsewhere on or near the campus of the University of Chicago, said dormitory to be operated without profit to the Society;

C. The purchase, leasing, ownership and use of real or personal property or any interest therein to be used for the convenience of or to encourage intellectual pursuits of students at the University of Chicago; and for this purpose, the sale, conveyance, mortgaging, leasing or otherwise disposing of all part of the property and assets of this Society;

D. The purchase, receipt, subscription for the acquisition, ownership, voting or using shares or other interests in or obligations of domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals and the sale, mortgaging or other disposition of such shares, interests or obligations for the purpose of effectively carrying out the above-stated objects of this Society;

E. The making of contracts, the incurring of liabilities, the borrowing of money and the making of mortgages in order to enable this Society to accomplish and or all of its lawful purposes.

Applicant Ex. No. 6.

10. The Internal Revenue Service confirmed applicant's inclusion in ADP's group exemption from federal income tax via correspondence dated November 20, 1992. Applicant Ex. No. 7.

11. A "Summary of Financial Condition" for the period June 1, 1993 through May 31, 1994 indicates that applicant obtained revenue from the following sources during that time:

<u>SOURCE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
*Rent	\$ 34,470.00	87% <sup>4</sup>

<sup>4</sup>. All percentages shown herein are approximations derived by dividing the category of income or expense (e.g. rent) by the appropriate total. Thus, for example,  $\$34,470.00 / \$39,783.05 = .8664$  (rounded) or approximately 87%.

*Dues & Donations	\$ 5,202.00	13%
*Interest	\$ <u>111.05</u>	<1%
Total revenues	\$ 39,783.05	

Applicant Ex. No. 8.

12. The above statement further discloses that applicant's expenses for the same period were as follows:

	<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
	*Property Tax	\$ 16,566.46	41%
14%	*Unspecified Summer Expense	\$ 5,516.89	
	*Summer Rent Credit	\$ 3,750.00	9%
	<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
	(Cont'd)		
	*Plumbing	\$ 4,405.59	11%
	*House Repair	\$ 1,578.13	4%
	*Steam	\$ 567.05	1%
	*Cleaning Services	\$ 1,950.00	5%
2%	*Lion's Head Endowment Fund	\$ 1,000.00	
	*Lion's Head Postage	\$ 369.72	<1%
<1%	*Lion's Head Newsletter	\$ 213.97	
	*Alumni Banquet	\$ 1,720.00	4%
	*Insurance	\$ 2,239.60	5%
	*Telephone	\$ 204.11	<1%
	*Mailbox Fee	\$ 180.00	<1%
<1%	*Secretary of State	\$ 5.00	
<1%	*Returned Check Charge	\$ 45.00	
<1%	*Unspecified Check Charge	\$ <u>13.25</u>	
	Total Expenses	\$ 40,3024.77	

*Id.*

13. A financial statement for the period June 1, 1994 through May 31, 1995 indicates that applicant obtained revenue from the following sources during that time:

<u>SOURCE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
---------------	---------------	-------------------

*Rent	\$ 12,300.00	63%
*Summer Rent-Net	\$ 4,000.00	20%
*Alumni Donations	\$ 3,200.00	16%
Total revenues	\$ 19,500.00	

Applicant Ex. No. 9.

14. The financial statement also discloses the following about applicant's expenditures during the same period:

	<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
20%	*Heat	\$ 7,500.00	
	*Insurance	\$ 00.00	N/A
	*Fundraising, letter	\$ 1,062.00	3%
	*Scholarships	\$ 1,000.00	3%
	*Building Repairs	\$ 2,310.00	6%
	*Tax	\$ 16,500.00	
45%	*Staff (Counselor)	\$ 4,922.00	13%
	*Centennial events, net	\$ 2,511.00	7%
	*Office, Phone	\$ 600.00	2%
	*ADP National		
	*Organization Fees	\$ 700.00	2%
	Total Expenses	\$ 37,105.00	

*Id.*

#### **CONCLUSIONS OF LAW:**

An examination of the record established that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the said parcel does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-35 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The governing provisions of that statute are, for present purposes, found in Section 200/15-35. In relevant part, that provision states as follows:

All property donated by the United States for school purposes and all property of schools, *not sold or leased or otherwise used with a view to profit*, is exempt [from real estate taxation], whether owned by a resident or non resident of

this State or by a corporation incorporated in any state of the United States. Also exempt is:

\*\*\*

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and *school-owned and operated* dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.

(c) property donated, granted, received or *used for* public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

(d) in counties with more than 200,000 inhabitants, which classify property, property (including interests in land and other facilities) on or adjacent to (even if separated by a public street, alley, sidewalk, parkway, or other public way) the grounds of a school, if that property is used by academic, research or professional society, institute, association or organization which serves the advancement of learning in a field or fields of study taught by the school *and which property is not used with a view to profit.*

35 **ILCS** 200/15-35. (Emphasis added)

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of

construction, Illinois courts have placed the burden of proof on the party seeking exemption and have required such party to prove by clear and convincing evidence that it falls within the appropriate statutory exemption. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

An analysis of whether this applicant has met its burden of proof begins the following definition of "school[.]" originally articulated in People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), (hereinafter "McCullough"), which Illinois courts have used to analyze claims arising under Section 200/15-35 and its predecessor provisions:<sup>5</sup>

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

McCullough at 137. See also, People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill. 2d 188 (1956), (hereinafter "Brenza").

One must also recognize the economically-based policy rationale whereby our courts have justified the exemption of "schools[.]" This rationale, best articulated in Brenza, *supra*, is as follows:

---

<sup>5</sup>. As noted in footnote 1, only the Property Tax Code, 35 **ILCS** 200/1-3 *et seq*, governs disposition of the instant case. However, it should be noted that the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq*, contained statutes governing property tax exemptions for the 1992 and 1993 tax years. The exemption provisions for tax years prior to 1992 were contained in Ill. Rev. Stat. 1991 par. 500 *et seq*. These provisions, as well as their predecessors, were repealed when the Property Tax Code took effect January 1, 1994. See, 35 **ILCS** 200/32-20.

It seems clear from the foregoing that this constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by publicly supported schools, academies, colleges and seminaries of learning and which, to some extent, thereby lessen the tax burden imposed upon our citizens as the result of the public educational system.

Brenza at 202-203.

Subsequent decisions have sought to enforce this rationale and the aforementioned definition of "school" by requiring private entities, such as applicant, to prove two propositions by clear and convincing evidence: first, that applicants offer a course of study which fits into the general scheme of education established by the State; and second, that applicants substantially lessen the tax burdens by providing educational training that would otherwise have to be furnished by the State. Illinois College of Optometry v. Lorenz, 21 Ill. 219 (1961), (hereinafter "ICO"). See also, Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); American College of Chest Physicians v. Department of Revenue, 202 Ill. App.3d. 59 (1st Dist. 1990); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991).

In applying ICO and its progeny to the instant case, one must remember that the word "exclusively," when used in Section 200/15-35 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose."

Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). One must also recognize that "[i]f real estate is leased for rent, whether in cash or other form of consideration, it is used for profit." People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924). Thus, "[w]hile the application of income to charitable purposes aids the [allegedly exempt activity], the primary use of [the parcel in question] is for [non-exempt] profit." *Id.* See also, Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

Here, the organizational documents received into evidence as Applicant Ex. No. 6 establish that this applicant is not a "school[.]" Rather, it is a corporation whose operations have more to do with the non-exempt functions of acquiring, renting and managing real estate than providing courses of instruction or engaging in other activities that satisfy the above-stated exemption requirements. Therefore, the Department's finding that the subject property was not in exempt ownership should be affirmed.

The record also establishes that applicant uses the subject property exclusively for non-exempt rental purposes. The financial documents admitted as Applicant Ex. Nos. 8 and 9 confirm that 86% of the Society's total revenues<sup>6</sup> came from rental sources during the

---

<sup>6</sup>. I derived the 86% figure by the following computations:

A. Total Rentals Shown on	
Applicant Ex. No. 8	\$ 34,470.00
	+
B. Total Rentals Shown on	\$ 12,300.00

period which began June 1, 1993 and ended May 31, 1995. Considering that this period encompassed the entire 1994 assessment year, and because one of applicant's witnesses, Winston Kennedy, admitted that "this [the subject parcel] is an investment property ..." (Tr. p. 99), I must conclude that the said parcel was not in exempt use during 1994. Therefore, the Department's finding to that effect should be affirmed.

Applicant seeks to defeat these conclusions by arguing they effectively deny the Society equal protection of the laws. Specifically, applicant argues that failure to grant a property tax exemption in this case violates the Equal Protection Clauses found in the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Illinois Constitution, because the subject property would be exempt if it were owned by the University or another "school[.]"

While applicant is correct that Section 200/15-35(b) specifically provides for exemption of "school owned and operated" fraternity houses, its equal protection argument fails for several reasons. First, it assumes that the Society is in fact similarly situated to a

---

Applicant Ex. No. 9	+\$4,000.00
C. Total Rentals	\$ 50,770.00
D. Total Revenues Shown on	
Applicant Ex. No. 8	\$ 39,783.05
E. Total Revenues Shown on	+
Applicant Ex. No. 9	\$ 19,500.00
F. Total Revenues	\$ 59,283.00
G. Total Rentals Divided	\$ 50,770.00/
by Total Revenues	\$ 59,283.05
Equals	.8564 (rounded)
	or 86%

"school." However, the above analysis establishes that this applicant's operations are not those of a "school" within the meaning of Section 200/15-35. Rather, they are those of a non-exempt real estate management company. As such, the Society fails to satisfy the fundamental (at least for equal protection purposes) requirement of being similarly situated to the allegedly preferred class. See, Ashcraft v. Board of Education of Danville Community Consolidated School District No. 118 of Vermillion County, 83 Ill. App.3d 938 (4th Dist. 1980).<sup>7</sup>

---

<sup>7</sup>. For analysis of the related topic of the State's authority to classify for tax purposes under the Equal Protection Clause of the United States Constitution, see, Lenhausen v. Department of Local Governmental Affairs, 410 U.S. 356 (1973), wherein Justice Douglas described the scope of that authority as follows:

The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently than others. The test is whether the difference in treatment is an invidious discrimination. [citation omitted]. Where taxation is concerned and no specific federal right, apart from equal protection is imperiled [footnote omitted], the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. As stated in Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526-527:

States have the attribute of sovereign powers in devising their fiscal schemes to ensure revenue and foster their local interests. Of course, the States in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to

Furthermore, applicant's argument fails to recognize that the preposition "of," which precedes the word "school" on no fewer than two occasions in Section 200/15-35(b), connotes a very specific ownership requirement. Both the rules mandating strict construction (*See, supra*, pp. 9-10) and the policy rationale articulated in Brenza prohibit statutory interpretations that extend this requirement beyond the entities specified in Section 200/15-35.

The Society is not similarly situated to any of those specified entities. Nor do its operations qualify applicant for exempt status as a "school[.]" Therefore, I must discount its attempt to befog the record with arguments that effectively circumvent the Legislature's otherwise clear and specific ownership requirements as being contrary to current, applicable law.

Thirdly, the cases applicant cites in support of its argument are easily distinguishable from the present matter. Searle Pharmaceuticals, Inc. v. Department of Revenue, 117 Ill.2d 454 (1987), (hereinafter "Searle") wherein the Illinois Supreme Court invalidated a 1977 amendment to Section 203(e)(2)(E) of the Illinois Income Tax Act, was expressly decided on the basis of the Uniformity, rather than

---

reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise scientific uniformity with respect to composition, use or value.

Lenhausen, at 359-360.

Equal Protection Clause, of the Illinois Constitution. See, Searle at 464, 469, 478.

The Uniformity Clause, which is found in Article IX, Section 2 of the Illinois Constitution, states as follows:

In any law classifying the subjects or objects of *non-property* taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds, and other allowances shall be reasonable.

Ill. Const. 1970, Art. IX, Sec. 2. (emphasis added).

The italicized language establishes that the Uniformity Clause, by its plain meaning, does not apply to property tax cases. The Searle court expressly recognized this point by observing that "Article IX, section 2, of the Illinois Constitution ... is not a general limitation on legislative action but is addressed specifically to the General Assembly's power to classify for *nonproperty tax purposes*." Searle at 466. (Emphasis added). Given that the present outcome necessarily depends on the Legislature's ability to classify for property tax purposes, I conclude that applicant's reliance on Searle is clearly misplaced.

Applicant also cites Northwestern University v. City of Evanston, 221 Ill. App.3d 893 (1st Dist. 1991). There, the court struck down an amendment to defendant's municipal hotel-motel tax ordinance on grounds that it violated the Uniformity Clause. That Clause is, per the above analysis, inapplicable in the present case. More importantly, applicant's reliance on this particular case fails to recognize that all property owned by Northwestern University is,

unlike its own or that of the University, exempt from real estate taxation by the terms of Northwestern's Legislatively-granted corporate charter. See, Private Laws of 1855, p. 483; People ex. rel. County Collector of Cook County v. Northwestern University, 51 Ill.2d 131 (1972). Thus, for all the above-stated reasons, applicant's equal protection argument fails.

The Society next argues that the subject property should be exempt because its operations further those of the University. This argument draws support from the evidence indicating that the fraternity house is equipped with a library and hosted various lectures during 1994. (Applicant Ex. Nos. 4, 22; Tr. pp. 71, 107-108).

Although our courts have sustained exemptions where applicant proves that its operations are "reasonably necessary" to further those of another exempt entity (See, MacMurray College v. Wright, 38 Ill.2d 272 (196; Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991); Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992)), applicant fails to qualify under that standard for numerous reasons. First, according to the testimony of applicant's alumni advisor, Christopher Hadley Faerber, the lectures were not "directly sponsored" by the University. (Tr. p. 103). Nor did the University exercise any manner of control over same. (Tr. p. 104). For these reasons, and because Mr. Faerber admitted that the lectures had a social component to them, (Tr. p. 104), I conclude that applicant conducted these activities primarily for non-exempt social and fraternal purposes. See, Rogers Park Post

No. 108 v. Brenza, 8 Ill. 2d 286 (1956); North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967)

Furthermore, the record does not contain a scintilla of evidence establishing that the lectures were part of any course of study at the University or that students obtained course credit for attending same. As such, I can not conclude that the lectures and other related activities furthered exempt activity at the University. Moreover, because the subject property was primarily used for non-exempt rental and investment purposes during 1994, any incidental educational activity taking place via the lectures or the library must be considered legally insufficient to sustain applicant's burden of proof. As such, its attempt to obtain exemption under the "reasonably necessary" standard must fail.

Taken in its entirety, the above analysis also serves to defeat most of applicant's remaining statutory arguments. The Society posits that it is exempt under Section 200/15-35(d) as property "adjacent to ... the grounds of a school." It may be true that the subject parcel is located in Cook County (a county, which by administrative notice, I find contains more than 200,000 inhabitants), and situated near other University property (Tr. p. 73, 90). Nevertheless, applicant's argument fails because Section 200/15-35(d) expressly limits the exemption to properties not used "with a view to profit."

Applicant also seeks relief under Section 200/15-35(c), which provides for exemption of "property donated, granted received or used for public school, college, theological seminary, university or other educational purposes, whether held in trust or absolutely." However, this applicant is not one of the entities described in Section 200/15-

35(c). Rather, it is a real estate management company that uses the subject property primarily for non-exempt rental and investment purposes. Because the Society does not satisfy the very specific ownership and use requirements contained in Section 200/15-35(c), its property cannot be exempt thereunder.

I would nevertheless note that "in trust" language implies that the Society might prevail under a constructive trust theory. The leading case on this topic is People ex. rel. Goodman v. University of Illinois Foundation, 388. Ill.2d 363 (1944), (hereinafter "Goodman"). There, the Illinois Supreme Court held that certain properties, including a student Union Building and various residence halls, could be exempt from taxation under the applicable version of Section 200/15-35 even though the University of Illinois itself did not hold legal title to the properties.

The University of Illinois did not hold title because it was prohibited by statute from incurring any indebtedness chargeable against the State. As such, it could not carry out an extensive building project that it had planned without the assistance of appellee's not-for-profit foundation, which was not subject to a similar statutory prohibition. Under these circumstances, the court held that the title issue was not decisive because appellee was acting as a constructive trustee for the University of Illinois. The court further indicated that the arrangement whereby appellee leased the properties to the University of Illinois did not defeat exemption because the gross income (as well as the properties in their entirety) were used exclusively for an exempt purpose, to wit, public education.

The present record does not contain any evidence establishing that the University of Chicago was statutorily prohibited from incurring indebtedness chargeable against the State during 1994. The record also fails to disclose that applicant was created for the express purposes of enabling the University to overcome such a prohibition or that the Society acquired the subject property in order to assist the University with a major construction project. Rather, both the deed (Applicant Ex. No. 1B) and the Society's Organizational documents (Applicant Ex. No. 6), establish that applicant acquired the subject property pursuant to a non-exempt, arm's length business transaction for its own behalf.

Moreover, the financial statements submitted as Applicant Ex. Nos. 8 and 9 prove that applicant applied most, if not all, of the rental proceeds to the non-exempt purpose of operating a privately-owned fraternity house. Based on all of these distinctions, I conclude that applicant does not serve as a constructive trustee for the University. As such, its property is not entitled to exemption from 1994 real estate taxes under the principles articulated in Goodman.

Applicant attempts to defeat the above conclusions by relying on Southern Illinois University v. Booker, 98 Ill. App.3d 1062 (5th District, 1981), (hereinafter "Booker"). This case is quite factually similiar to Goodman in that Southern Illinois University was legally prohibited from entering into long term loans, and therefore, could not practicably assume title to the subject property in its own name.

In order to remedy this situation, the Foundation (which was allowed to incur appropriate debt) assumed title to the property,

whereupon Southern Illinois University sought exemption under the provisions pertaining to property belonging to the State of Illinois.<sup>8</sup> The court found that the Foundation was not "readily separable from [Southern Illinois] University and, consequently, the State." Booker at 1070. It based this conclusion on numerous factors, including reciprocal resolutions stating "that upon retirement of the mortgage, the Foundation will reconvey the property as improved to the University without further cost to the University, and that the University will continue to operate the project as a student housing facility." Booker at 1066.

The court proceeded to reason that:

... Although the Foundation is a corporate entity legally distinct from that of the University, the function of one is expressly "to promote the interests and welfare" of the other, and some of the highest officers of the University are required, under the bylaws of the Foundation, to serve in some of the highest positions of the Foundation. Thus, a further reality of ownership of this property is the identification to a certain extent between the holder of bare legal title and the State as holder of the entire equitable interest. In this case, then not only does the Foundation hold but naked legal title to property controlled and enjoyed by the State, but a certain identity exists as well between the holder of naked legal title and the State. For these reasons, we hold the property exempt from taxation as property belonging to the State.

Booker at 1070-1071.

This case is unlike Booker primarily because the sole test for the exemption of property of the State of Illinois is ownership.

---

<sup>8</sup>. At the time Booker was decided, those provisions appeared in Ill. Rev. Stat. 1979, ch. 120, par. 500.5. They currently appear in 35 **ILCS** 200/15-55.

Public Building Commission of Chicago v. Continental Illinois National Bank & Trust Company of Chicago, 30 Ill.2d 115 (1963). Moreover, the record is completely devoid of any evidence (resolutions, etc.) tending to show that applicant's operational nexus to the University is so strong or intertwined that one entity is not "readily separable" from the other. Indeed, applicant's organizational documents, which establish that it is the real estate management company for a privately owned fraternity house that happens to be located within the University community, suggest the opposite conclusion. For these reasons, and because the factual similarities between Booker and Goodman establish that constructive trust principles do not apply in the present case, I must conclude that applicant's reliance on Booker is misplaced.

In summary, the subject property does not qualify for exemption under Section 200/15-35 because it is neither in exempt ownership nor in exempt use. Specifically, said property is owned by a non-exempt private real estate management company, a fact which serves to distinguish the present case from Knox College v. Department of Revenue, 169 Ill. App.3d 832 (3rd Dist. 1988), wherein the court upheld exemption of a *college owned* fraternity house. Furthermore, applicant's primary use of the subject property (which I emphasize is that of a real estate management company) fails to satisfy any of the specific use requirements set forth in Section 200/15-35 or its associated subsections. Based on these considerations, and given that applicant's election to forgo necessary repairs in order to pay property taxes (Tr. p. 80, 86) constitutes a business decision rather

than a legally sufficient basis for granting an exemption, the Department's decision denying same should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Number 20-14-116-006 not be exempt from 1994 real estate taxes.

---

Alan I. Marcus  
Administrative Law Judge